

**UNITED STATES GOVERNMENT  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 29**

CROSSINGS RECOVERY SYSTEMS, INC.  
D/B/A CROSSINGS RECOVERY CENTERS<sup>1</sup>  
Employer

and

Case No. 29-RC-10145

AMALGAMATED LOCAL 298, INTERNATIONAL  
UNION OF ALLIED, NOVELTY AND PRODUCTION  
WORKERS, AFL-CIO  
Petitioner

**DECISION AND DIRECTION OF ELECTION**

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, herein called the Act, as amended, a hearing was held before Henry Powell, a Hearing Officer of the National Labor Relations Board, herein called the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding, the undersigned finds:

1. The Hearing Officer's rulings made at the hearing are free from prejudicial error and hereby are affirmed.
2. The parties stipulated that Crossings Recovery Systems, Inc.<sup>2</sup> ("Employer"), is a New York State corporation, with its principal office and place of business located at 450 Waverly Avenue, Suite 5, Patchogue, New York<sup>3</sup> and with a

---

<sup>1</sup> The name of the Employer is hereby amended to conform to the record evidence.

<sup>2</sup> The record indicates that the Employer's d/b/a name, Crossings Recovery Centers, appears in the telephone book, on the Employer's web site and Policies and Procedures manual, and on the buildings at the five clinical facilities.

<sup>3</sup> Due to an inadvertent typographical error, the address set forth in the transcript (as testified to by the Employer's CEO, Frank Buonanno) is "1250 Mayberry Avenue, Patch Avenue."

subsidiary corporation called Crossings Rehabilitation Services, Inc.,<sup>4</sup> located at 60 Carleton Avenue, Suite 204, Islip Terrace, New York, herein called its Islip Terrace facility, and with other facilities located in Suffolk and Nassau counties, is engaged in the business of providing drug and alcohol rehabilitation and counseling. During the past twelve month period, which period is representative of its operations in general, the Employer, in the course and conduct of its business operations, received gross annual revenues in excess of \$250,000. Also during the past twelve-month period, the Employer purchased and received at its Islip Terrace facility, goods, supplies and materials valued in excess of \$5,000, from suppliers located within the State of New York, which suppliers, in turn, purchased and received said materials from suppliers located outside the State of New York.

Based on the stipulation of the parties, and the record as a whole, I find that the Employer is engaged in commerce within the meaning of the Act, and that it will effectuate the purposes of the Act to assert jurisdiction herein.

3. The labor organization involved herein claims to represent certain employees of the Employer.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Sections 2(6) and (7) of the Act.

5. Amalgamated Local 298, International Union of Allied, Novelty and Production Workers, AFL-CIO, herein called the Petitioner, seeks to represent a unit of

---

<sup>4</sup>The Petitioner amended the petition at the hearing to name Crossings Rehabilitation Services, Inc., as the employer herein. The petition names Crossing Recovery Services, Inc., as the employer. However, the record evidence reflects that Crossings Recovery Systems, Inc., is the employer of the petitioned-for employees.

all full-time and regular part-time office clerical employees and drug and alcohol counselors at the Employer's Islip Terrace facility, but excluding all social workers, directors, managers, guards and supervisors as defined in the Act.

### **Positions of the Parties**

The Petitioner takes the position that the petitioned-for unit is appropriate. The Employer takes the position that the petitioned-for bargaining unit is inappropriate, because (1) the counselors are technical employees and do not share a community of interest with the clerical employees; (2) any unit encompassing the counselors must also include nurses and social workers;<sup>5</sup> and (3) a single-facility unit would be inappropriate, because of the overwhelming community of interest among employees at the Islip Terrace, Port Jefferson, Patchogue, Deer Park and West Hempstead facilities (herein collectively called "the Facilities").

Accordingly, the Employer proposes that the petitioned-for employees be apportioned among two multi-facility bargaining units, with one unit encompassing counselors, nurses and social workers at the five sites set forth above, and the second unit encompassing office clerical employees, including the secretaries at the five clinical facilities, the billing staff and other business office clericals at the Patchogue facility, the marketer who works out of the Deer Park facility, and the courier, who is assigned to the Port Jefferson facility. At the hearing, the Employer took the position that managed care coordinators could be appropriately placed in either of these bargaining units. Further, the Employer contends that the Employer's social workers serve as counselors, and are

---

<sup>5</sup> At the hearing, the Employer took the position that the Employer's medical doctors should be included in the bargaining unit. Subsequent to the hearing, however, the parties stipulated that the medical doctors are professionals, that they are not employees of the Employer, and that neither party seeks to include them in the bargaining unit. The stipulation is received as Joint Exhibit 1.

not professionals under the definition set forth in Section 2(12) of the Act. The parties stipulated that program directors and senior counselors are supervisors.

### **The Hearing**

The hearing in the instant case was held on January 8 and 12, 2004. Both parties had the opportunity to examine and cross-examine witnesses, introduce documents, and file briefs. The Employer's two witnesses were Frank Buonanotte, who has been the Employer's chief executive officer for three years, and Thomas Kenney, who became the director of the Islip Terrace facility on January 5, 2004 (one week prior to his testimony). Kenney, a former counselor, served as co-director of the Islip Terrace facility from September through December, 2003, and as senior counselor from June until September, 2003.

Additional witnesses subpoenaed by the Board and the Petitioner, such as the directors of the four other clinical facilities, failed to appear at the hearing. The Employer filed a brief, and the Petitioner submitted a letter brief.

### **FACTS**

The Employer's Chief Executive Officer ("CEO") and sole shareholder, Frank Buonanotte, testified that the Employer is the management service organization for five outpatient facilities for the treatment of alcoholism and other forms of substance abuse, as well as two residential facilities which provide temporary housing. Although these facilities are separately incorporated and licensed, Buonanotte is the sole shareholder of all of these facilities. However, Buonanotte testified that the employees who work at the following facilities are all employed by the Employer (although subpoenaed documents pertaining to the identity of the employing entity were never supplied):

<b><u>Name of Corporation</u></b>	<b><u>Location (in NY State)</u></b>	<b><u>Approx. # of Employees</u></b>
Crossings Addiction Management, Inc.	Patchogue	25
Crossings Rehabilitation Services, Inc.	Islip Terrace	15
Crossings of Long Island	Port Jefferson	15
Crossings Recovery Program, Inc.	Deer Park	15
Crossings of Nassau County	West Hempstead	10
Nassau Crossings Recovery )	Lakeview and	1
Residences, Inc. <sup>6</sup> )	Brentwood	1

### **Geographical Relationship among the Facilities**

According to Buonanotte, the Islip Terrace facility is either 15 or 25 miles from the Patchogue facility, 40 miles from the West Hempstead facility, and 10 miles from the Deer Park facility. He did not testify regarding the distance between the Islip Terrace and Port Jefferson facilities, or about other combinations such as the distance from West Hempstead to Patchogue.

Buonanotte also testified that the Islip facility is 40 miles from the Lakeview residence, which is six miles from the Brentwood residence. Neither party seeks to include the Brentwood or Lakeview residences in the bargaining unit.

### **Job Classifications at the Clinical Facilities**

Buonanotte estimated that the Employer's clinical staff includes about 60 alcoholism and substance abuse counselors, between five and twelve social workers, one psychologist, two or three medical doctors ("MDs")(including the medical director)<sup>7</sup>, two

---

<sup>6</sup> Neither party seeks to include the Lakeview or Brentwood employees in the bargaining unit.

<sup>7</sup> The record further reflects that the Employer employs a number of physicians' assistants.

licensed practical nurses (“LPNs”), and two nurse practitioners. He asserted that the Employer does not currently employ any registered nurses (“RNs”). According to Buonanotte, the Employer’s administrative staff consists of about twenty employees, and includes secretaries, office managers, and managed care coordinators.

The record further reflects that the following administrative employees work at the Patchogue facility only: medical billers, collectors, the benefit eligibility coordinator (also referred to as “verification benefit coordinator”), “accounts payable and receivable,” controller/bookkeeper, payroll administrator and “human resources people.” A community liaison / marketer works out of the Deer Park facility, and a courier is based at the Port Jefferson facility.

#### **Job Classifications at the Islip Terrace facility**

At the Islip Terrace facility, according to Buonanotte, the administrative staff consists of an office manager named Kathy, and three secretaries who report to Kathy. There are twelve clinical staff members, including program director Kenney (a Certified Social Worker (CSW) who holds a Masters of Social Work degree (MSW)) and a senior counselor. Buonanotte believed, “just from [his] own memory,” that the Employer employs one LPN at the Islip Terrace facility, and one social worker, other than the director. The remaining eight clinical staffers are counselors, according to Buonanotte. Kenney testified that there are three social workers at the Islip Terrace facility, which would leave six counselors.

#### **Job Classifications at the Residences**

The Employer employs one house manager at each of the two residence facilities, located in Lakeview and Brentwood. Neither party seeks to include these individuals in

the bargaining unit. The Employer does not employ secretaries, counselors or social workers at the residences.

### **Reporting Structure**

Buonanotte testified that Alicia O'Connor, the Employer's executive director, oversees the Employer's entire clinical operation, and a portion of the administrative operations for all offices. According to Buonanotte, O'Connor visits each site at least monthly, to assist the program directors, who report directly to her. Otherwise, she works at the Patchogue facility, as does Buonanotte. Kenney testified that O'Connor only visits the Islip Terrace site every other month, but that he is in constant contact with her by telephone, and at directors' meetings.

The program directors, also referred to as facility supervisors, clinical directors, site directors, or simply, directors, are responsible for the clinical and administrative operations at each of the five clinical facilities, and they supervise the senior counselors and counselors. The senior counselors perform administrative work, assist the program director in supervising the counselors, and serve as acting directors when the directors are absent from the facility.

Buonanotte further testified that the medical staff, including nurses, nurse practitioners and physicians' assistants, report to the Employer's medical director, who is

a doctor.<sup>8</sup> The medical director, in turn, reports directly to the executive director.

In addition, according to Buonanotte, the Employer's senior office manager, whose office is in Patchogue, "coordinates the administrative operations of all the front office procedures at all the offices." To this end, she supervises the office managers at each individual site, who, in turn, supervise the secretaries. In addition, she serves as the facility-level office manager for the Patchogue facility, supervising the secretaries there. According to Kenney, the senior office manager "stops in" at the Islip Terrace about once a month, to meet with the office manager and on occasion, to help out with clerical work when secretaries are out on vacation or sick leave.

The record further indicates that the managed care coordinators report to the managed care director, who has an office in Patchogue and travels to other locations.<sup>9</sup> According to Kenney, the managed care director does counseling work at the Islip Terrace facility on Wednesdays. When performing counseling work, she reports to the senior counselor and director at that facility. In addition, Kenney testified that the managed care director visits all five sites to ensure that the managed care coordinators are doing their jobs.

---

<sup>8</sup> At one point, Buonanotte testified that all clinical staff members report to the senior counselors and program directors, and that a clinical staff member "could be an alcoholism and substance abuse counselor. It could be a nurse. It could be a doctor, or a...therapist of some kind, possibly a social worker or a psychologist." However, the Employer's organizational chart indicates that only counselors report to the senior counselors and program directors, and that the medical staff reports to the medical director, who reports directly to the executive director.

<sup>9</sup> At times, the managed care director was referred to as the "managed care coordinator," and the employees who report to her were referred to as "managed care people." Also, at one point, Buonanotte testified that managed care director's office is in Islip.



Lastly, the billing staff at the Patchogue facility report to the billing manager. According to Kenney, the billing manager in Patchogue is in daily telephone contact with the office manager at the Islip Terrace facility.<sup>10</sup>

### **Secretaries**

Kenney testified that secretaries conduct the initial telephone screening of prospective patients, to ascertain whether they may be in need of the Employer's services. The secretary then invites the prospective patient to the facility, at which time the secretary provides the patient with paperwork to fill out. This includes screening questionnaires used in evaluating the severity of the patient's addiction. The secretary scores the questionnaires, using a template, and sets up the patient's file, which is forwarded to the intake counselor to use in the diagnostic interview. The secretaries maintain the patient files, help counselors to retrieve them, and take telephone messages for the counselors.

The Employer's secretaries work in two shifts, from 8:30 a.m. until 5:00 p.m., and from 4:00 until 8:30 p.m.

### **Counselors**

The record reflects that after a prospective patient's screening questionnaires have been graded by a secretary, the patient meets with an intake counselor, who gathers further information about the prospective patient. Ultimately, the senior counselor assigns the patient to a "regularly scheduled group" led by a counselor. The primary function of the Employer's counselors is to facilitate groups providing

---

<sup>10</sup> When asked whether the billing manager communicates with other staff members, Kenney speculated that she might: "I believe she speaks to the office manager. I believe that she would probably, if the other staff member—clerical staff members could answer a question, you know, I believe she speaks with them, as well."

“psychotherapeutic education on the disease concept of addiction to individuals and families who are afflicted with the disease of addiction,” according to Kenney.

Buonanotte testified that all of the Employer’s counselors, other than the social workers, are either Credentialed Alcoholism and Substance Abuse Counselors (“CASACs”), or are working towards meeting the requirements for a CASAC credential. According to the CASAC Regulations (Employer’s Exhibit 3), which are administered by the New York State Office of Alcoholism and Substance Abuse Services (“NYSAS”), the requirements for earning this credential include a high school diploma or General Equivalency Diploma (“GED”), 350 hours of education and training at an accredited school or training program, 300 hours of supervised practical training, 6000 hours (three years) of supervised full-time equivalent experience (formal academic degrees can be substituted for a part of this experience), and passage of an examination. The record does not reflect whether any of the Employer’s CASAC counselors have academic degrees.

Kenney testified that counselors are paid between \$9 and \$13 per hour.

### **Social Workers**

Buonanotte testified that there is no separate job title for social workers; rather, they are considered to be counselors. The job descriptions set forth in the Employer’s Policies and Procedures manual confirm that there is an “Addictions/Substance Abuse Counselor” title, but not a “Social Worker” title. In their testimony, the two witnesses often referred to individuals with social work degrees and CASAC credentials interchangeably, as “counselors.” At times, however, the witnesses differentiated between the two, as when Buonanotte stated that a clinical staff member “could be an alcoholism and substance abuse counselor...[or a] therapist of some kind, possibly a

social worker or psychologist.” The Employer employs social workers at its Islip Terrace, Port Jefferson, Patchogue and West Hempstead facilities.

Buonanotte testified that all of the Employer’s social workers have Masters in Social Work (“MSW”) degrees. According to Buonanotte, the MSW degree is a requirement for the job because, “If they haven’t finished their Master’s, they may not, if they don’t have the degree or the education to start working and providing the services they’ve been taught.”<sup>11</sup> In addition, all or most of the Employer’s social workers have licenses (as do the doctors and nurses), having passed the examination for certified social worker (“CSW”).

When asked how the work performed by social workers differs from counselors’ work, Kenney testified that a social worker, “just in my opinion--would have a more rounded concept of treatment as opposed to someone who had just a specific to alcohol and substance abuse.” In addition, Buonanotte testified that the social workers have the training to diagnose and treat mental illness, which enables them to work effectively with patients of the Employer who are suffering from both substance abuse problems and mental health diagnoses. In this regard, Kenney acknowledged that, “We do have some programs where it would be better if the person was a social worker,” such as the mentally ill / chemically addicted group (“MICA”), a dual focus group. Although Kenney did not know whether or not a social work degree is a prerequisite for leading a MICA group, he did not claim that there are any MICA groups that are *not* led by social workers. Further, Kenney testified that one factor in convincing Buonanotte to hire a new social worker, who holds an MSW degree, was “the need for perhaps developing our

---

<sup>11</sup> Kenney contended that a social worker can have a Bachelors of Social Work degree (“BSW”), but there is no record evidence that the Employer has ever hired social workers who do not have MSW degrees.

MICA program and he agreed...” Buonanotte acknowledged that there was one instance when he hired a certain unnamed male social worker specifically for a special program that was very important to the Employer.

Several supervisory and management officials of the Employer hold social work degrees, including the program directors at Patchogue and Islip Terrace, and the senior counselor at Patchogue. The record does not indicate whether other program directors and senior counselors have social work degrees.

The record does not indicate whether social workers’ rates of pay are higher than those of CASACs, or whether their work schedules are similar.

### **Managed Care Coordinators**

Buonanotte testified that patients’ clinical information, gathered in diagnostic interviews with counselors, is forwarded to the managed care coordinators. Using this information, the managed care coordinators then contact patients’ insurance carriers, managed care companies, or health maintenance organizations (“HMOs”) requesting authorization to treat the patients.

Kenney testified that the senior counselor at the Islip Terrace facility was previously the “managed care person” there, but was recently promoted. The record does not reflect how many managed care coordinators are employed by the Employer, or whether the Islip Terrace facility has filled the managed care coordinator vacancy resulting from the promotion.

### **Nurses**

Of the Employer’s two LPNs, one is assigned to the Islip Terrace facility. Buonanotte testified that her job is to provide medical assessments, substance abuse

treatment, and managed care coordination. In addition, she will be traveling to other facilities “immediately” to provide medical assessments. While “several nurses may just be nurses,” whose only function may be to provide medical assessments, Buonanotte testified that the LPN at Islip Terrace is “skilled and credentialed, a bona fide counselor.” However, the record does not shed light on the nature of her counseling skills and credentials, the type of substance abuse treatment she provides, or whether she performs any of the same job functions that the counselors do. There is no record evidence regarding her pay rate or work schedule, or regarding any interchange or contacts between the Islip Terrace LPN and the petitioned-for employees. Further, the record does not reflect what training and education the LPN undertook in order to become licensed as an LPN.

The Employer also employs two nurse practitioners, who travel among the five clinical facilities and are not assigned to a particular facility. The nurse practitioners are licensed to prescribe medications. One of the nurse practitioners is a psychiatric nurse practitioner, who provides medication management as well as psychiatric evaluations. The other nurse practitioner only does medication management. With regard to interchange and contacts between the nurse practitioners and other employees, Kenney testified as follows in his direct examination:

Q: And at a particular site who would the nurse practitioner interact with?

A: The nurse practitioner interacts with patients who [are] experiencing both substance abuse problems and mental health problems.

Q: Do they interact with any of the employees in the facilities?

A: On an informal basis, but not that procedurally.

Q: And on an informal basis who would they interact with?

A: On a formal basis?

Q: Informal, on an informal basis?

A: Well, I mean, you know, they, they may, you know, interact with the counselor, you know, to get any information to the care that they need to provide. Certainly, you know, they may, you know, have some interaction with the program director, if the program director is involved in a particular case.

The record does not reflect how often such “interactions” occur. Further, there is no record evidence regarding the nurse practitioners’ degrees, licenses, and/or credentials, their education and training, their pay rates, their work schedules, or the frequency and duration of their visits to the Islip Terrace facility.

### **Courier**

The record reflects that the courier, based at the Port Jefferson facility, delivers office supplies and inter-office mail to all of the facilities, using his own vehicle. Kenney testified that the courier brings supplies to the Islip Terrace facility on Mondays, Wednesdays and Fridays, and stays at the facility for five to ten minutes. While there, he speaks with the office manager, and on occasion, chats with the director and senior counselor. There is no evidence of any contacts or interchange between the courier and the petitioned-for employees. There is no record evidence regarding the courier’s wage rate or working schedule.

### **Marketer**

Kenney testified that the marketer, who works out of the Deer Park facility, visits the Islip facility about once a month, and stays for half an hour to two hours, talking with the program director. In addition, Kenney recalled two recent occasions when counselors made marketing presentations with the marketer, but he did not indicate when or where

these marketing presentations occurred, which counselors participated, or what the collaboration entailed. There is no record evidence regarding the marketer's wage rate or work schedule.

### **"Accounts Payable People"**

Kenney testified that the "accounts payable people" in Patchogue telephone the Islip Terrace office daily, and speak with the office manager and "any of the clerical staff if they could answer the question...managed care would certainly have interaction." He did not indicate how often the "accounts payable people" speak with clerical staff members other than the office manager. There is no record evidence regarding the "accounts payable people's" wage rates or work schedules.

### **Permanent Transfers Among the Five Facilities**

Buonanotte testified that both permanent and temporary transfers occur "all the time," but ultimately admitted that there are only one or two permanent transfers per year. He could recall only two specific examples of permanent transfers, both involving stipulated supervisors.<sup>12</sup>

### **Temporary Transfers, Interchange and Contacts among Employees at the Five Facilities**

Buonanotte estimated that "maybe once a month," a facility might "borrow" a secretary from a different facility, to fill in for an employee who is on vacation or out sick. He did not provide specific examples, but Kenney recalled one: in November or early December, 2003, one of the Islip Terrace secretaries filled in at the Patchogue

---

<sup>12</sup> Karen Laviglio, a counselor at the Patchogue facility, was not "transferred" as alleged by the Employer. Rather, she "terminated her employ for about a year," after which she was rehired by the Employer at another facility, according to Buonanotte. The record does not reflect how long ago this occurred.

facility for part of one day,<sup>13</sup> at the request of the senior office manager, who also serves as the office manager for the Patchogue facility.

Also in 1999 or 2000, three counselors at the Patchogue facility (including Kenney) filled in for counselors at other facilities, when necessary. However, Kenney conceded that this has not occurred in a long time.

The record indicates that a few employees work at more than one site. For example, Buonanotte testified that nurse practitioners travel among the five clinical facilities, and may interact with the counselors, to obtain information on the care they need to provide. In addition, although the LPN at the Islip Terrace facility currently works only at that facility, she “recently agreed” to travel to other facilities to provide medical assessments, and will be doing so “immediately.”

In addition, Buonanotte contended that there are three or four counselors who work out of more than one location, but he recalled the name of just one of them, Karen Laviglio. Similarly, Kenney testified that Karen Laviglio is the only counselor he knows of who works at more than one site. Karen Laviglio, who is assigned to the Port Jefferson site, travels to the Islip Terrace, Patchogue and Deer Park facilities to run the Employer’s Batterers’ Intervention Program (“BIP”). The BIP is a dual-function program for persons convicted of domestic violence crimes, who also have alcohol and substance abuse problems. Laviglio also is responsible for an anger management program, which meets in Patchogue, Deer Park, and Port Jefferson (where Laviglio is

---

<sup>13</sup> Kenney further testified that sometime during the latter half of 2003, the Employer’s senior office manager, who normally works at the Patchogue facility, filled in at the Islip Terrace facility. In addition, he maintained that the Islip Terrace office manager has also filled in at the Patchogue facility. However, as further discussed *infra*, I have found the office managers and senior office manager to be statutory supervisors.



permanently assigned), but not in Islip Terrace. The record does not indicate whether Laviglio has an MSW degree or a CASAC credential.

Kenney testified that when Laviglio is in Islip Terrace, running the BIP, she reports to the senior counselor there. She coordinates treatment with the counselors in Islip who treat members of the BIP group for alcohol and substance abuse problems. In addition, while in Islip, Laviglio “interacts” with the office manager and the office staff, who retrieve telephone messages and patients’ charts and records for her. When Laviglio makes notes of her counseling sessions with patients at the Islip facility, her notes are kept at the Islip facility. Kenney further testified that Laviglio interacts with the “managed care person” at Islip Terrace, who was recently promoted to senior counselor.

The record does not reflect how much time Laviglio spends at the Port Jefferson facility, where she is permanently assigned, and how much time she spends running special programs at other facilities. As a basis for comparison, the record discloses only one other individual who is assigned to one clinical facility, but leads dual-function groups at other facilities, and that is Thomas Kenney himself. Kenney runs a dual-function group, known as the special offenders program, for convicted sex offenders who also have alcohol and substance abuse problems. The group meets in Patchogue on Thursdays from 5:30 to 7:00 p.m., and in West Hempstead on Fridays, also from 5:30 to 7:00 p.m. However, Kenney sometimes arrives earlier to perform assessments of prospective group members. Otherwise, Kenney can be found at the Islip Terrace facility, performing the functions of program director.

In addition, Kenney testified that for a three-month period in 1999, as a counselor assigned to the Patchogue facility, he also led a counseling group at the Islip Terrace

facility. He was subsequently transferred from the Patchogue facility to the Islip Terrace facility.

### **Training and Staff Meetings**

Kenney testified that staff members from different facilities attend in-service job training programs together. Recently, for example, there was an in-service educational program at Patchogue which three counselors from Islip Terrace attended. However, new-employee orientation is conducted on-site. In addition, there are monthly, site specific staff meetings for Islip Terrace employees only, which are attended by the senior counselor, the counselors, and sometimes, the office manager and secretaries. In addition, Kenney testified that there are on-site clinical supervision meetings, among the clinical treatment team. The record does not indicate whether these clinical supervision meetings are attended by counselors only, or whether other personnel are also included.

### **Similarity of Employee Skills and Functions**

Buonanotte testified, in conclusory fashion, that counselors at all of the Employer's facilities have the same skills and functions.

### **Similarity of Working Conditions and Benefits**

Buonanotte testified that all five clinical facilities are open from 8:30 a.m. until 10:00 p.m. on weekdays, and on Saturdays from 8:30 until 1:00. The employees in the five facilities receive the same benefits, such as the opportunity to participate in the same health insurance plan and 401(K). They all have the same paid holidays, and the amount of time off with pay. All employees who treat patients are covered by the same malpractice insurance policy (although some obtain their own policies as well). All

employees are paid on any hourly basis, and maintain individual payroll logs, in which they notate their hours worked.

As indicated above, Kenney testified that counselors are paid between \$9 and \$13 per hour. He did not indicate whether this includes social workers. There is no record evidence regarding the pay rates of other job classifications. As stated previously, secretaries work in two shifts, from 8:30 a.m. until 5:00 p.m., and from 4:00 until 8:30 p.m. The record does not disclose the working schedules of employees in other job classifications.

### **Centralized Authority of CEO**

Buonanotte asserted that he sets the operating budget for each clinic, with input from the Employer's controller, but not from the program directors. In addition, he determines the hours of operation for each clinic, the amount of paid vacation and sick time employees will receive, and what the paid holidays will be. With respect to increasing staffing levels, hiring and firing employees, setting their salaries, and granting raises and paid overtime, only Buonanotte has the authority to make the final decision; program directors can only make recommendations. Buonanotte recalled rejecting directors' requests to hire additional employees, although he could not recall ever rejecting a program director's recommendation to discharge an employee.

Kenney confirmed that as the Islip Terrace program director, he is not empowered to grant paid overtime or leaves of absence on his own, nor can he determine whether there is a need for more staff without first obtaining Buonanotte's authorization (although he initially testified that Buonanotte's authorization was not a prerequisite to increasing staffing levels). With regard to raises, Kenney testified that the first step in the

process would be for a counselor to speak with the senior counselor, or for a secretary to ask the office manager. The senior counselor or office manager would then approach the site director, who would approach the executive director. Ultimately, the executive director would seek the approval of Buonanotte. However, Kenney acknowledged that nobody has ever asked him for a raise, and he was not aware of any raises that had been granted to employees at the Islip Terrace facility. Further, Kenney was not aware of any written policies governing the granting of raises.

Kenney further testified that he does not have the authority to discharge employees or grant promotions. On one occasion, the executive director asked him to discharge a counselor because of “some issues involving this person.” Although Kenney was aware of the “issues,” the discharge was not his decision, and was not based on his recommendation. Similarly, Kenney maintained that before obtaining approval to promote the “managed care person” at Islip to senior counselor, he first had to speak with three individuals: his co-director (who is now the director of another facility), the executive director, and Buonanotte.

#### **Facility-Level Authority of Program Directors and Office Managers**

Buonanotte acknowledged that program directors and office managers are authorized to set the work schedules of the clinical and clerical staffs, respectively, at each facility, and to discipline employees, short of discharge. Program directors, senior counselors, and office managers interview job applicants; Buonanotte could only recall one instance when he conducted the interview. In addition, Buonanotte conceded that program directors are authorized to approve or disapprove time off<sup>14</sup> requests, and

---

<sup>14</sup> The Employer does not differentiate between vacation time, sick leave and personal leave. Rather, employees received a set number of hours of “time off.”

requests for scheduling changes. According to Buonanotte, program directors write evaluations.<sup>15</sup>

Kenney acknowledged that he has the authority to grant time off, to decide who will fill in for an absent employee, and to ask the fill-in to work extra hours. In addition, Kenney acknowledged that he recently interviewed three job applicants who now work at the Islip Terrace facility: a counselor with a CASAC credential, a counselor with an MSW degree who is now a CSW, and an intern. After interviewing these candidates, Kenney testified, “We telephoned Alicia the executive director and let her know that we have decided to—that this person would be appropriate for the position, that he or she could be—fill that role and we would actually end up speaking with Frank.” The executive director and Buonanotte did not interview these job applicants. No new secretaries have been hired at Islip since Kenney began working at that location.

### **Centralized Operations**

Buonanotte further testified that certain operations of the Employer, such as payroll, personnel and direct billing of insurance companies, are performed centrally, at the Employer’s main office in Patchogue. Information relevant to these functions, such as billing and attendance information, is submitted into the Employer’s “networked” computer database by the office managers at each separate facility, enabling the main office personnel in Patchogue to access the information. Certain employee classifications only exist at the Patchogue office, such as the medical biller, collector, payroll administrator, insurance benefit verification benefit coordinator (referred to in the manual

---

<sup>15</sup> In contrast with Buonanotte’s testimony, Kenney denied having the authority to write evaluations or discipline employees. However, Kenney admitted that the necessity for discipline has not arisen during his brief tenure as program director.

as “benefit eligibility coordinator”), “accounts payable and receivable,” “human resources,” controller/bookkeeper, and accounts receivable coordinator.

However, Buonanotte testified that the individual facilities do their own patient billing.

### **Extent of Organization**

The Petitioner’s organizing campaign only encompassed the petitioned-for employees.

### **Bargaining History**

There is no bargaining history involving the Employer’s employees.

## **DISCUSSION**

### **Case Law – Appropriate Unit**

In making unit determinations, “the Board first considers the union’s petition and whether that unit is appropriate.” *P.J. Dick Contracting*, 290 NLRB 150, 151 (1988). If it is not appropriate,

the Board may examine the alternative units suggested by the parties, and also has discretion to select an appropriate unit that is different from the alternative proposals of the parties. The Board generally attempts to select a unit that is the ‘smallest appropriate unit’ encompassing the petitioned-for classifications.” *Overnite Transportation Company*, 331 NLRB No. 85 (2000).

However, it is well-established that “there is nothing in the statute which requires that the unit for bargaining be the *only* appropriate unit, or the *ultimate* unit, or the *most* appropriate unit; the Act only requires that the unit be ‘appropriate.’” *Morand Brothers Beverage Co.*, 91 NLRB 409, 418 (1950)(emphasis in original), *enfd on other grounds*, 190 F.2d 576 (7<sup>th</sup> Cir. 1951).

The “community of interest” criteria applied by the Board in making unit determinations include “distinctions in skills and functions of particular employee groups, their separate supervision, the employer’s organizational structure and differences in wages and hours, as well as integration of operations, and employee transfers, interchange and contacts.” *Atlanta Hilton and Towers*, 273 NLRB 87, 90 (1984); *see also Seaboard Marine, Ltd.*, 327 NLRB 556 (1999). Additional relevant factors include fringe benefits and other working conditions, work location, degree of centralized control over the employer’s day-to-day operations and personnel policies, and previous bargaining history (or lack thereof) at the Employer. *See J.C. Penney Company, Inc.*, 328 NLRB 766 (1999); *Transerv Systems, Inc.*, 311 NLRB 766 (1993); *Allied Gear and Machine Company, Inc.*, 250 NLRB 679 (1980). By weighing these various factors, the Board evaluates whether the employees in the proposed unit “share a sufficiently distinct community of interest from other employees as to warrant a separate unit,” *Transerv*, 311 NLRB at 766, or conversely, whether other employees share such a strong community of interest with the employees in the proposed unit that their inclusion in the unit is required. *J.C. Penney*, 328 NLRB at 766.

In addition, Section 9(b) of the Act provides that the Board “shall decide in each case whether...the unit appropriate for the purposes of collective bargaining shall be the

employer unit, craft unit, plant unit, or subdivision thereof.” Since both single-plant units and employer-wide units are specifically set forth in Section 9(b), both are presumptively appropriate. *See Overnite Transportation Co.*, 322 NLRB 723 (1996); *Rental Uniform Service, Inc.*, 330 NLRB No. 44 (1999)(the single facility presumption was not rebutted); *Owens-Illinois Glass Company*, 136 NLRB 389 (1962)(an employer-wide unit of tugboat employees was held presumptively appropriate, even if single vessel units also might have been appropriate). In resolving unit issues pertaining to multilocation employers, the Board considers the geographical relationship among the facilities involved; the functional integration of operations; the degree of employee interchange; the similarity of employee skills, functions, working conditions, and benefits; shared supervision; the extent of local autonomy, balanced against the extent of centralized control over daily operations, personnel and labor relations; bargaining history, if any exists; and the extent of organization. *See, e.g., Novato Disposal Services, Inc.*, 328 NLRB No. 118 (1999); *R & D Trucking*, 327 NLRB 531 (1999); *Passavant Retirement and Health Center*, 313 NLRB 1216 (1994); *Globe Furniture Rentals, Inc.*, 298 NLRB 288 (1990); *Twenty-First Century Restaurant of Nostrand Avenue, Licensee of McDonald’s Corporation*, 192 NLRB 881 (1971); *Davis Cafeteria*, 160 NLRB 1141 (1966); *Sav-On Drugs, Inc.*, 138 NLRB 1033 (1962); *Barber-Colman Company*, 130 NLRB 478 (1961).

#### **Appropriateness of Islip Terrace Unit**

The record reflects that the Employer’s payroll, personnel and billing functions are centralized, and benefits such as health insurance coverage are uniform. The Employer’s CEO sets overall labor relations policies, and his approval must be sought for



major personnel decisions. However, the Employer's top management officials work at the Patchogue facility, which (according to Buonanotte) is either 15 miles or 25 miles from the Islip Terrace facility. The executive director and senior office manager visit each clinical facility about once month, and there is no evidence that the CEO visits the facilities on a regular basis. The only representatives of management with whom the Islip Terrace employees have daily contact are their facility-level supervisors.

Thus, program directors and office managers at the individual facilities set employees' work schedules, approve requests for scheduling changes and time off, and may ask subordinates to work extra hours in order to fill in for absent colleagues. In addition, they write employees' evaluations, interview job applicants, and are empowered to discipline employees, short of discharge.<sup>16</sup> Moreover, their discharge recommendations are generally followed, according to Buonanotte.

Further, there is minimal evidence of interchange or contacts among employees at the Employer's five clinical facilities, which are separated by distances of up to 40 miles. Buonanotte testified that there are only one or two permanent transfers per year, and he could not provide specific examples of non-supervisory employees who had permanently transferred. The record discloses just one recent example of an employee filling in for another at a different facility, for just part of a day. Although some training programs are attended by employees from more than one facility, the Islip Terrace facility conducts its own, site-specific training for new employees, staff meetings, and clinical supervision meetings.

---

<sup>16</sup> Because they possess several of the supervisory indicia set forth in Section 2(11) of the Act, I conclude that the Employer's office managers and senior office manager are statutory supervisors.

Moreover, only five employees, out of a total of about 80, regularly work at more than one facility. None are in the petitioned-for bargaining unit. For example, the courier is based in Port Jefferson, and there is no evidence that he has any contact with the petitioned-for employees when he makes his deliveries. The nurse practitioners are not assigned to a particular facility, and their contacts with the petitioned-for employees are minimal. Furthermore, their skills and credentials are distinct from those of the petitioned-for employees, inasmuch as they are licensed to prescribe medications. Similarly, as discussed in greater detail below, the LPN assigned to the Islip Terrace facility travels among the various sites, providing medical assessments, and there is no evidence of any interaction with bargaining unit employees. Finally, Karen Laviglio is a counselor stationed at the Port Jefferson facility, who leads dual-function groups at other sites. The record does not reveal how much time she spends at these other locations, or whether she holds a CASAC certification or a Master's in Social Work. As discussed below, I have found the Employer's social workers to be statutory professionals whose inclusion in the unit cannot be mandated.

With regard to the marketer at the Deer Park facility, and the medical billers, collectors, benefit eligibility coordinator, "accounts payable and receivable," "human resources people," and other business office clericals at the Patchogue facility, the evidence of any interchange or contacts with the petitioned-for Islip Terrace employees is minimal to non-existent. Nor is there evidence of similar wage rates or working schedules, or common supervision. Therefore, I am unable to find that the exclusion of

these individuals from the petitioned-for bargaining unit renders it inappropriate, as urged by the Employer.<sup>17</sup>

In sum, the Employer has failed to establish that the Islip Terrace facility is so functionally integrated into a broader, five-facility unit that it has lost its separate identity.<sup>18</sup> Although the five-facility unit urged by the Employer might well be appropriate, factors such as the substantial distances among the facilities, the autonomy exercised by facility-level supervisors, and the near absence of significant interchange or contacts among Islip Terrace employees and those at other locations, undermine the Employer's contention that the only appropriate unit encompasses all five clinical facilities of the Employer. Accordingly, I conclude that the single-location bargaining unit sought by the Petitioner is appropriate.

**Appropriateness of Including Counselors and Clerical Employees, but Excluding Social Workers and Nurses from the Petitioned-for Bargaining Unit**

In *Catholic Social Services*, 225 NLRB 288 (1976), the Board found appropriate a petitioned-for unit of office clerical employees and nonprofessional community counselors, but excluding all professional employees, confidential employees, and supervisors. In that case, the employer contended that the unit sought was inappropriate because the petitioned-for community counselors, "although nonprofessional, ha[d] a close community of interest with the professional family counselors, [and had] no community of interest with the office clerical employees." *Catholic Social Services*, 225 NLRB at 289. As in the instant case, the clerical employees provided supportive services for the counselors, including client intake appointments, record maintenance, telephone answering, greeting clients, filing, and the like. The Board found their functions to be

---

<sup>17</sup> Brief of Employer at 4, 14.

<sup>18</sup> Brief of Employer at 11.

analogous to those of plant or hospital clericals. *Id.* Further, since the clerical employees had “a direct work relationship with the community counselors, [were] under the same supervision, [were] on the same payroll, enjoy[ed] the same working conditions and fringe benefits, and ha[d] continuing contacts with them,” the Board found the petitioned-for unit appropriate. *Catholic Social Services*, 225 NLRB at 289.

The Board further found that the community counselors, who were not required to be college educated, collaborated with the professional family counselors in attempting to resolve clients’ problems. *Catholic Social Services*, 225 NLRB at 289. Both professional family counselors and nonprofessional community counselors participated in monthly staff educational and training programs. *Id.* Given that “the Employer’s primary and almost single function [was] to provide counseling services regarding family and related problems and that the work efforts of the entire staff [were] directed toward rendering these services,” the Board concluded that the “most appropriate unit” would consist of professional family counselors, non-professional community counselors, and clerical employees. *Catholic Social Services*, 225 NLRB at 289. However, Section 9(b)(1) of the Act, which prohibits the inclusion of professionals and non-professionals in the same unit unless the professionals vote for inclusion, precluded the Board from requiring that the professional family counselors be included in the unit, since the petitioning unit did not seek to represent them. *Id.*

#### *Counselors and Clerical Employees at Islip Terrace*

In the instant case, as in *Catholic Social Services*, the secretaries at the Islip Terrace facility provide supportive services for the counselors, such as scheduling patients’ intake appointments, maintaining patients’ files, and taking telephone messages

for the counselors. In addition, the initial phase of the intake procedure is performed by the secretaries, who administer and score patient screening questionnaires. As in *Catholic Social Services*, the Islip Terrace secretaries have a “direct work relationship” and “continuing contacts” with the counselors. Although the secretaries’ immediate supervisor is the office manager, and the counselors’ immediate supervisor is the senior counselor, both are ultimately responsible to the program director. Neither the counselors nor the secretaries travel from facility to facility on a regular basis, as the nurses do. And since the counselors’ wage rates are low, it is unlikely that there is a substantial disparity in the wage rates of counselors and clerical employees at the Islip Terrace facility. Accordingly, I find that the inclusion of clerical employees and counselors in the same bargaining unit is appropriate.

The Employer argues that its counselors are technical employees, and cites *A.W. Schlesinger Geriatric Center, Inc.*, 260 NLRB 452 (1982), for the proposition that it would be inappropriate to combine the Employer’s technical employees (i.e., counselors) and clericals into a single bargaining unit.<sup>19</sup> However, the petitioned-for unit in *Schlesinger* consisted of service and maintenance employees. *Schlesinger*, 260 NLRB at 452. In contrast with the instant case, the petitioner in *Schlesinger* did *not* want to include technical employees in the bargaining unit. *Id.* The Board agreed that it was unnecessary to include the technical employees, who possessed a distinct community of interest in light of their skills, training and job functions, but noted that:

It may well be that a unit combining the Employer’s technical and service and maintenance employees, had it been sought by the Petitioner, would have been appropriate. However, as the Board stated in *Newington’s Children’s Hospital*, 217 NLRB at 794, “nothing in the policy of the Act can be said to place upon a

---

<sup>19</sup> Brief of Employer at 18.

union the obligation of seeking the largest appropriate unit, or even the most appropriate unit; it is enough that the unit sought is an appropriate unit.”

*Schlesinger*, 260 NLRB at 453. Thus, *A.W. Schlesinger* does not support the Employer’s argument that a combined technical and clerical unit would be inappropriate.

### Social Workers

Section 2(12) of the Act defines a “professional employee” as:

(a) any employee engaged in work (i) predominantly intellectual and varied in character as opposed to routine mental, manual, mechanical or physical work; (ii) involving the consistent exercise of discretion and judgment in its performance; (iii) of such a character that the output produced or the result accomplished cannot be standardized in relation to a given period of time; (iv) requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study in an institution of higher learning or a hospital, as distinguished from a general academic education or from an apprenticeship or from training in the performance of routine mental, manual or physical processes; or

(b) any employee, who (i) has completed the courses of specialized intellectual instruction and study described in clause (iv) of paragraph (a), and (ii) is performing related work under the supervision of a professional person to qualify himself to become a professional employee as defined in paragraph (a).

In *Catholic Social Services*, *supra*, the distinction between professional family counselors and non-professional community counselors was primarily based on the fact that family counselors had degrees in social service, and community counselors were not required to be college educated. 225 NLRB at 289. Similarly, in *SODAT, Inc.*, 218 NLRB 1327 (1975), therapists who functioned as group leaders and were only required to have a B.A. degree and/or two years of related experience were found not to be professionals. *SODAT*, 218 NLRB at 1328. Accordingly, the therapists could not be joined in a single unit with a professional holding a doctorate in clinical psychology, without the desires of the professional being determined in a separate vote. *Id.*

In the instant case, the CASAC counselors' only formal academic requirements are a high school diploma or G.E.D. and 350 hours of specialized education and training. By contrast, the Employer's social workers are all required to have Master's degrees. This provides them with "a more rounded concept of treatment" and the ability to diagnose and treat mental illness. The record indicates that the Employer's specialized "MICA" program for the treatment of "mentally ill / chemically addicted" patients is handled by social workers. The Board has found that providing psychotherapy for the mentally ill, "dealing as it does with the various mental problems of the clients, involves the consistent exercise of discretion and judgment in the treatment of those clients, and is a clearly intellectual endeavor." *Malcolm X Center for Mental Health, Inc.*, 222 NLRB 944, 946 (1976). Thus, the Board agreed with the parties' stipulation that mental health clinicians were professional employees. *Malcolm X*, 222 NLRB at 946.

Accordingly, I find that the Employer's social workers are statutory professionals in light of their superior education and training, and their involvement in the treatment of mental illness. The CASAC counselors, by contrast, are comparable to the community counselors in *Catholic Social Services*, *supra*, or the therapists in *SODAT*, *supra*. Accordingly, the inclusion of the Employer's social workers in the same bargaining unit as the CASAC counselors cannot be required, if not sought by the Petitioner, even if the merger of these two groups of employees would result in the "most appropriate unit." *Catholic Social Services*, 225 NLRB at 289.

#### Nurses

The nurse assigned to the Islip Terrace facility is more closely aligned with other medical personnel, such as the nurse practitioners,<sup>20</sup> than with the petitioned-for counselors and secretaries. Like the nurse practitioners, she reports to the Employer's medical director and travels among the various facilities. Her skills and credentials are distinct from those of the counselors and secretaries, to the extent that she has an LPN license and provides medical assessments. There is no evidence of any contacts between the LPN and the petitioned-for employees. Although Buonanotte testified that the LPN is a "counselor," and that she provides "substance abuse treatment," the record does not reveal what type of substance abuse treatment she provides, or whether the functions she performs overlap in any way with those performed by the counselors. Further, there is no evidence that she and the counselors ever substitute or fill in for one another, or that their wage rates or work schedules are similar. Accordingly, the record evidence does not provide a sufficient basis for requiring the inclusion of the LPN in the bargaining unit.

### **Managed Care Coordinator**

The record does not reveal whether there is currently a managed care coordinator working at the Islip Terrace facility. However, the record testimony that a prior managed care coordinator at Islip Terrace was promoted to senior counselor, and that the managed care director also performs some counseling work, is an indication that there is some overlap between the skills and training of the managed care coordinators and those of the counselors. In addition, there appears to be some interaction between the managed care coordinators and the counselors, to the extent that information from counselors' diagnostic interviews is forwarded to the managed care coordinators. In addition, it appears from the record that the managed care coordinators, unlike the nurses, work at

---

<sup>20</sup> The record reflects that the Employer also employs physicians' assistants.



the facility to which they are assigned, rather than traveling among the different facilities. Thus, it appears that the managed care coordinators (if any) at the Islip Terrace facility have sufficient ties to the petitioned-for bargaining unit to warrant their inclusion in the unit.

### **Summary of Findings**

Based on the foregoing, I find that the single-facility bargaining unit sought by the Petitioner, consisting of counselors and clerical employees at the Islip Terrace facility, but excluding social workers and nurses, is appropriate. Further, I find that the managed care coordinator (if any) at the Islip Terrace facility should be included in the unit. Accordingly, I will direct an election in the petitioned-for unit, which I find to be appropriate for the purposes of collective bargaining:

All full-time and regular part-time counselors, clerical employees and managed care coordinators employed at the Employer's 60 Carleton Avenue, Suite 204, Islip Terrace, New York, facility, but excluding all directors, managers, guards, nurses, social workers and other professional employees as defined in the Act, and supervisors as defined in the Act.

### **DIRECTION OF ELECTION**

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. The employees will vote whether they wish to be represented for purposes of collective bargaining by Amalgamated Local 298, International Union of Allied, Novelty and Production Workers, AFL-CIO. The date, time, and place of the election will be specified in the notice of election that the Board's Regional Office will issue subsequent to this Decision.

### **Voting Eligibility**

Eligible to vote in the election are those in the unit who were employed during the payroll period ending immediately before the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced, are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Unit employees in the military services of the United States may vote if they appear in person at the polls.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

### **Employer to Submit List of Eligible Voters**

To ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses, which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969).

Accordingly, it is hereby directed that within 7 days of the date of this Decision, the Employer must submit to the Regional Office an election eligibility list, containing the full names and addresses of all the eligible voters. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). This list must be of sufficiently large type to be clearly legible. To speed both preliminary checking and the voting process, the names on the list should be alphabetized (overall or by department, etc.). Upon receipt of the list, I will make it available to all parties to the election.

To be timely filed, the list must be received in the Regional Office, One MetroTech Center North, 10th Floor, Brooklyn, New York 11201, on or before **February 17, 2004**. No extension of time to file this list will be granted except in extraordinary circumstances, nor will the filing of a request for review affect the requirement to file this list. Failure to comply with this requirement will be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by facsimile transmission at (718) 330-7579. Since the list will be made available to all parties to the election, please furnish a total of **two** copies, unless the list is submitted by facsimile, in which case no copies need be submitted. If you have any questions, please contact the Regional Office.

#### **Notice of Posting Obligations**

According to Section 103.20 of the Board's Rules and Regulations, the Employer must post the Notices to Election provided by the Board in areas conspicuous to potential voters for a minimum of 3 working days prior to the date of the election. Failure to follow the posting requirement may result in additional litigation if proper objections to the election are filed. Section 103.20(c) requires an employer to notify the Board at least

5 full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. *Club Demonstration Services*, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on nonposting of the election notice.

### **RIGHT TO REQUEST REVIEW**

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570-0001. This request must be received by the Board in Washington by 5 p.m., EST on **February 24, 2004**. The request may **not** be filed by facsimile.

Dated: February 10, 2004.

/s/ Alvin Blyer \_\_\_\_\_  
Alvin Blyer  
Regional Director, Region 29  
National Labor Relations Board  
One MetroTech Center North, 10th Floor  
Brooklyn, New York 11201

Classification Index  
401-2575-1450  
401-7550  
420-5000  
440-1720-0133